THE OAHU ELECTION.

Fall Text of the Opinion by the Court -The Legislature Forgot to Say That the Ballots Should Be

Printed In Native.

IN THE SUPREME COURT OF THE HA-WAHAN ISLANDS.

In the matter of the Petition of JOHN ROSS and others to vacate an election of Nobles for the Division of

BEFORE BICKERTON, J.

The petition sets forth that the petitioners, fifty-one in number, are residents of Oahu; that they voted or were entitled to vote for Nobles of the Kingdom at the general election held on the Island of Oahu on the third day of February, 1892.

That the election was held; that proper returns were made, and that certificates of election were made, signed and delivered to the persons so declared to be elected. That duplicates of the certificates, together with the tabulated returns, were transmitted by said Marshal to the Minister of the Interior; that the following named gentlemen were declared elected: J.N. S. Williams, John A. Cummins and Paul Neumann for the term of six years, John Ena for the unexpired term of four years, and Arthur P. Peterson for the unexpired term of two years.

That C. B. Maile, John Ross, Henry Waterhouse, John Emmeluth, A. Mar-ques and Samuel M. Kaaukai, candidates for six years, E. B. Thomas for four years, and James Gay for two years, were formally and legally qualified and registered as such candipeared, together with those before named, on the ballots provided by the Minister of the Interior for use.

That it then was and is the law that each ballot should express in the Haany Hawaiian words expressing what was printed in English.

That in the preparation and print-ing of said ballots the Minister of the Interior refused and neglected to insert therein the Hawaiian equivalent of the name of said candidate Henry Waterhouse, viz: the word "Walakahauki," although said Minister was formally requested to insert said Hawaiian equivalent, and although all of the said ballots contained the Hawaiian equivalents of the names of all the others of said candidates having

foreign names. That by reason of such omission from said ballots of said words in the Hawaiian language, and of the Ha-waiian equivalent of the name of said Henry Waterhouse, it was impossible for Hawaiian voters for Nobles who were unacquainted with the English language (of whom there were several

And prays that said election be va-cated and declared null and void. The specimen ballot appended to the petition is in this form :

ELECTION FOR THE YEAR 1892.

DIVISION OF OAHU. FOR NOBLES. For Six Years.

C. B. MAILE. HENRY WATERHOUSE. J. N. S. WILLIAMS. (Wiliama). PAUL NEUMANN.

(Paulo Neumana). A. MARQUES. (Makuika). JOHN ROSS. (Kapena Loke). J. A. CUMMINS. (Keoni Kamaki). JOHN EMMELUTH. (Emaluka).

SAM'L M. KAAUKAI. Special Election. For the Unexpired Term of Four Years.

E. B. THOMAS (Kamaki). JOHN ENA (Keoni Ina). Special Election.

For the Unexpired Term of Two Years.

JAMES GAY (Kimo Ke). A. P. PETERSON (Aka Piketona).

ceive a deposit of such costs as may serve for the then unexpired term of natural, then, that where the law be necessary in the case. The hearing may be had before any Justice of 8. That none of the ballots for the matter shall be printed or published

other whose rights or interests are omitted therefrom, as appears by the particularly affected, who shall be specimen of said ballots. "Koho Balota Kuikawa," or they designated by the Chief Justice of the ten days prior to such hearing."

"Section 89. No person who has for whom he has voted."

Justice shall cause the evidence to Hawaiian voters were prejudiced in waiian, or both languages. It was in be reduced to writing in full, or suffi-ciently to ascertain all of the facts peded in their voting by reason of the any provision of this nature, and those JUDGE BICKERTON UPHOLDS | a new election shall at once be ordered

1. That thirty-nine of the peti-tioners have voted for Nobles at the

teen days of said petition and or the time set for hearing the same was given to the Chairmen of the several Boards of Inspectors of said election for the Island of Oahu, and also to all the candidates for Nobles who were that the words "Hanele Walaka-the words "Hanele W by service made by the Marshal upon each of them of a copy of the follow-

"The petition of John Ross and fifty others, having this day been filed in the office of the Clerk of the Supreme valid, null and void.

"Therefore it is hereby ordered that said petition be heard before such dates; that their several names appeared, together with those before be sitting at Chambers, at Aliiolani Hale in Honolulu, on the said Island of Oahu, at 10 o'clock A. M., on Monday the 21st day of March, instant, when and where all persons inter-

"And also, that a copy of this order and notice be served by the Marshal upon each Chairman of the several follow Boards of Inspectors of Election within and for the several precincts of said division of Oahu, and upon J. N. S. Williams, John A. Cummins, Paul Neumann, John Ena and Arthur P. Peterson, they being the candidates who were returned and certified as having been elected at said election, as Nobles for said division.

"And also, that a copy of this order and notice be published in the Eng-

division, made their respective returns to the Marshal of the Kingdom, of the votes cast at the said election in said division, for candidates for Nobies, and that the said Marshal thereupon, and acting upon said returns and in conformity therewith, made, executed and signed certificates of election of Nobles for said island and division of Oahu, wherein and whereby it was in substance cerisland and division of Oahu, wherein and whereby it was in substance certified that J. N. S. Williams, John A. Cummins and Paul Neumann were duly elected Nobles for said island and division of Oahu, each to serve for a term of six years next succeeding the said election; that John Ena was duly elected Noble for said island and division to serve for the then unexpired term of four years next succeeding said election, and that Arthur P. Peterson was duly elected Noble for said island and divieted to the name given to him by his parents; he may have any number of nicknames or aliases, but none of them is hls proper name. It may have been a disadvantage to Mr. Waterhouse to have this native name left out, whether it was by his own or others' neglect is not the question. The only question that I can consider is, has the law been complied with by only inserting the name of Henry Waterhouse? I hold it has, and in that respect the ballot is a good one. that Arthur P. Peterson was duly elected Noble for said island and division, to serve for the then unexpired term of two years next succeeding said election. That an original of said certificates was delivered by the said Marshal to each of the persons so declared to be elected, and duplicates of said certificates, together with the tabulated returns for said election, were transmitted by said Marshal to the Minister of the Interior as provided by Section 83 of Chapter 86, of the Acts of 1890.

7. That at the said election the fol-

A. P. PETERSON (Aka Piketona).

The law under which these proceedings are brought, is Chapter LXXXVI. of the Session Laws of 1890, being "An Act to Amend and Consolidate the Election Laws of the Kingdom." Sections 87, 88, 89 and 90 of said Act read as follows:

"Section 87. In addition to the methods hereinbefore set forth for vacating any seat in the Legislature, any candidate, or any thirty persons who have voted, or were entitled to vote in the district, may file a petition addressed to the Chief Justice of the Supreme Court, setting forth any cause or causes, why an election shall be vacated or a seat be declared waren. Such partition shall be vacated or a seat be declared waren. Such position and provided to the Act of the Act of the Act of the Act of the Interior for use, and which were used at and upon the said election, by the Minister of the Interior, in whose department it has been deposited and preserved; this gives the law effect in ten days after the publication on Oahu, and thirty days on each of the other islands, unless otherwise specially provided in the Act. Chapter 1 Compiled Laws. After the close of the Legislature, all laws signature, the Constitution provides those above named persons, besides those it is alw. See Article 48 of the Constitution. The law is then publish shall be vacated or a seat be declared didates for Nobles to serve for the vacant. Such petition shall be filed term of six years; E. B. Thomas as a vides: "If at any time a radical in the office of the Clerk of the Su-preme Court within thirty days fol-as a Noble for the unexpired term of found to exist between the English lowing an election, and prior to the four years, and James Gay as a can- and Hawaiian versions, the English hearing thereon the Clerk shall re- didate for special election as Noble to version shall be held binding." It is

the Supreme Court, and shall be held in the Judicial Circuit wherein the and used at and upon the election law on Divorce, Compiled Laws, Secelection is disputed. Provided, how-ever, that the Supreme Court shall "Koho and no ka makahiki (1892)," to be binding would be the one used have no jurisdiction over any such | nor any Hawaiian words specifying | in case there should be any difference case during the session of the Legis- the name of the office, or the name of found to exist in the two versions. ture."

"Section 88. A notice of not less the division for Nobles, or the term of the division for Nobles, or the term of might have been printed in the Hathan fourteen days shall be given to special elections, any words in the waiian language only; using the the Inspectors of such election as may be contested, and to the candidate who shall have been returned, words "Koho Balota Kuikawa," but language specifying the unexpired terms of the office; nor the words "Koho and no ka makahiki" (1892) and the words in the Hawaiian language specifying the name of the or whose seat is contested, and to any | that all of said Hawaiian words were | office, the term of office, and, in the

designated by the Chief Justice of the Supreme Court. Besides such notice, tained any Hawaiian equivalent of guages on the same ballot paper witha written or printed notice shall be the name of Henry Waterhouse, and likewise posted in the district, or that all of the said ballots did contain law; one line would be simply a published in some newspaper circu- the Hawaiian equivalent of the names translation of the other, and the ballot lating in the district, for not less than of all the others of said candidates would contain nothing more than the having foreign names.

voted at any election shall, in any hundred native Hawaiians, voters for legal proceeding, be required to state Nobles on the Island of Oahu, at the ballot shall be printed in, it is silent time of said election. "Section 90. At the hearing the

Particular attention pass 2841.7

house, would consent to be one of the candidates for Noble for six years for the Island of Oahu, or whether a formal request was made by Mr. Water-house to have these words printed on 90 of this statute specially requires the election held on the third day of candidates for Noble for six years for February, A. D. 1892, on the Island of the Island of Oahu, or whether a for-Oahu.

2. That four of said petitioners, to wit: A. Marques, E. B. Thomas, C. B. Maile and John Ross, were candidates for Nobles at said election, but were not declared elected;

3. That the petition herein filed, was filed ir the office of the Clerk of the Supreme Court within thirty days following said election;

4. That notice of not less than fourteen days of said petition and of the time set for hearing the same was given to the Chairmen of the several given to the Supreme Court within thirty days failed them as to some of the minor facts, which might explain the conflict in the testimony. In fact, all the witnesses who testified on this question for Nobles on the Island of Oahu, a specimen of which is here in this matter, being the one in question in

> Under date of January 19th, 1892, the Justices of the Supreme Court an-swered several questions submitted to them by Her Majesty's Cabinet, one being the question of inserting the Hawaiian name of the candidate in the ballot. The Justices say in their

"Under Sections 55 and 56 of the Election Law it will be competent for and Division of Oahu, held on the third day of February, A. D. 1892, was and is invalid, null and void, and should be vacated, and praying for a hearing of said petition, and for judgment that said election was and is invalid, null and void. the Minister of the Interior in having the ballots printed for use, to insert of the voting community, and is not a 'word motto, device, sign or sym-bol' which are forbidden by the law to be on the ballot. The candidate's name may be printed in the form sug-gested in your letter, i.e., John Smith

(Keoni Kamika)."
This opinion does not make it neces sary to insert the Hawaiian name or waiian language what it did in the English language; that none of the ballots used at said election contained ballots used at said election contained where an persons interest and where an persons interest and where an persons interest and where an persons interest alias of the candidate, but simply have, why the prayer of said petition should not be granted.

Sections 55 and 56 of the Act read as

follows: "Section 55. The election shall be by ballot only. A ballot is written or printed, or partly written and partly printed paper, containing the names of all persons to be voted for. Every ballot printed in accordance with the provisions of this Act shall contain the names of all candidates whose naminations for any office specified in nominations for any office specified in the ballot have been duly made, and shall contain no other names."

language (of whom there were several hundreds) to learn the meaning or particulars of said ballots, and consequently were thereby deprived of their legal and constitutional rights under the law.

And prays that said election be verified and prays that said election be verified and said order and notice was published in the English language in the Pacific Commercial and shall be so printed that the type shall not show a trace on the back. Besides the name or names to be which is a look-out. Stable and Servants word, motto, device, sign or symbol other than allowed by this Section, and shall be so printed that the type shall not show a trace on the back. Besides the name or names to be which is a look-out. Stable and Servants with hot and cold water attachment. Kitchen, Pantry, and China the thereby fixed for the fleating of the first closet with hot and cold water at other than allowed by this Section, and shall be so printed that the type shall not show a trace on the back. Besides the name or names to be voted for, it shall contain nothing excepting the words 'Election for the law.' the din Honolulu, for more than ten days prior to this hearing:

6. That the said election was held and resulted as follows, viz.: The several Inspectors of Election for the several precincts of said island and division, made their respective returns to the Marshal of the Kingdom, of the votes cast at the said election in said division, for candidates Nobles, and the term of the angle of the division in said division, for candidates Nobles, and the term of the office and also the words "Hanelo Which is a look-out. Stable and a Room upon the ground which are laid out. Terms reasonable.

Pensacola Street, and in the case of a special election it may also contain the words specifying the term of the office and also the words "Special Election."

The question is, does the absence the name or names to be voted for, it shall contain nothing excepting the words 'Election for the special election for the several precincts of said island and division, made their respective returns to the Marshal of the Kingdom, of the votes cast at the said election in said division, for candidates Nobles, and the term of the office and also the words 'Special Election.'"

The question is, does the absence the mame or names to be voted for, it shall contain nothing excepting the words 'Election for the special election for the several precincts of said island and division, made their respective returns to the Marshal of the Kingdom, of the votes cast at the said election in said division, for candidates which is a look-out. Stable and a Room upon the ground which are captured to the office and the office and the office and the name of the office and the office and also the words 'Election.'"

The question is, does the absence the words 'Hanelo Which is a look-out. Stable and a Room upon the ground which are captured to the said out. Terms reasonable.

For particulars enquired to the words special election in the words of the words 'Hanelo Which are captured to the words 'Hanelo Which are captured to the captured to the captured to the p

"Koho Balota Kuikawa," or they law allowed, for the law either in the 10. That there were about seven English or Hawaiian version does not as to any requirement that the ballots As to the facts alleged, that many shall be printed in the English, Ha-

8. S. Co.

be reduced to writing in full, or sufficiently to execrtain all of the facts involved, and shall thereupon give judgment, stating all of his findings of fact and the law thereupon, which shall then be transmitted in full to the Minister of the Interior, provided no appeal shall be that the election was invalid, and the seat therefore vacant, a new election shall at once be ordered by the said Minister."

As Section 90 requires the Justice hearing the case to state "all his findings of fact and the law thereupon," I will first proceed to find from the evidence the facts.

I find the following facts to have dence:

1. That thirty-nine of the petitioners have voted for Nobles at the election held on the third day of

I have been inclined to reserve this question of law for the full Court, matter, being the one in question in consequently, on the findings of fact and law made by me herein, I must deny the prayer of the petitioners and dismiss the petition.

And it is so ordered. A. S. Hartwell and Ashford & Ashford for petitioners; Attorney-General Whiting and F. M. Hatch contra. RICHARD F. BICKERTON,

Justice Supreme Court. March 30, 1892.

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W. B. Godfrey, J. Ena, G. N. Wilcox, W. O. Smith, F. A. Schaefer. W. H. McLEAN, Secretary.

Honolulu, March 28, 1892. 3033-6t

FOR SALE OR LEASE.

and notice be published.

Ish and Hawaiian languages, respectively, in the Pacific Commercial Advertiser (in English) and in Ka Leo o ka Lahui (in Hawaiian), they being newspapers printed and published within said island and division, for the space of ten days prior to the date hereby fixed for the hearing of said petition."

That a copy of said order and the English of the Same sizing color. It shall bear no word, motto, device, sign or symbol other than allowed by this Section, and shall be so printed that the type shall not show a trace on the back.

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Honolulu, March 7, 1892. 3015-1m*

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wheel, or if you are safe in taking the advice of a friend who, possibly, may know any more about a wheel than you do. After you have considered, and if you are able to decide to your satisfaction, then buy the bicycle that suits you. If you have any doubts, then be on the safe

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